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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re D.C., a Person Coming Under the Juvenile
Court Law.

KERN COUNTY DEPARTMENT OF HUMAN
SERVICES,

Plaintiff and Respondent,

v.

DARRELL C.,

Defendant and Appellant.

F078162

(Super. Ct. No. JD138381)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Kern County. Raymonda B. Marquez, Judge.

Suzanne M. Nicholson, under appointment by the Court of Appeal, for Defendant and Appellant.

Margo A. Raison, County Counsel, and Judith M. Denny, Deputy County Counsel, for Plaintiff and Respondent.

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* Before Peña, Acting P.J., Snauffer, J. and DeSantos, J.

INTRODUCTION

Appellant Darrell C. is the father of D.C., (the minor) who is the subject of a Welfare and Institutions Code¹ section 300 petition. At the disposition hearing, father requested placement of the minor pursuant to section 361.2. The juvenile court denied the request, finding that placement of the minor with father would be detrimental to the minor. Father appeals, contending there is insufficient evidence to support the detriment finding. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

On March 21, 2018, the Kern County Department of Human Services (department) filed a section 300 petition on behalf of the then 15-year-old minor. The petition alleged that mother had hit the minor with an extension cord numerous times, leaving welts on his leg and a two-inch cut on his heel, and slapped and punched him. While hitting the child, mother screamed at him to get out of the house and not come back. The petition alleged that mother hit the minor in this manner on a monthly basis.

In addition, the petition alleged that mother often left the minor to babysit four younger children in the home, exposed the minor and younger children to “her own sex trafficking”, and had not sought mental health care for the minor, who made self-harming statements.²

The minor indicated his mother did not like the fact that he identified as bisexual. Mother indicated the minor needed psychiatric treatment because of issues surrounding his sexual preference and the fact the minor’s father had mental health issues.

The minor was placed with his grandmother in Fresno while efforts were made to locate father. Information was obtained that father had two misdemeanor and six felony

¹ All statutory references are to the Welfare and Institutions Code.

² D.C. is the only child that is the subject of this appeal. Therefore, our factual summary focuses on those facts relevant to him.

convictions, including felony convictions for serious or violent offenses such as battery resulting in serious bodily injury, willful infliction of corporal injury on a spouse or cohabitant, robbery, and willful cruelty to a child.

A social worker made contact with father on April 11, 2018. Father did not want the minor placed with him at this time; he claimed the minor had tried to lie to him. Father stated that if the minor became “trapped in the system or staying in foster care,” he would ask for placement.

At the April 18, 2018 jurisdiction hearing, the juvenile court found the allegations of the section 300 petition true and declared the minor a dependent of the juvenile court. Father was granted supervised visitation. Father was directed to notify the agency by May 1, 2018, regarding whether he would be requesting placement of the minor in his home.

On June 6, 2018, the social worker spoke with father about whether he was requesting placement or services. Father indicated he was interested in visits.

In July 2018, the minor had not returned home to his grandmother’s home on a Saturday night and when he returned home on Sunday, they argued. He did not report for school on Monday morning. Police were called to locate the minor and he was placed in a group home in Bakersfield.

A supplemental social study filed on September 25, 2018, reflected that the minor ran away from the grandmother’s home because he was a victim of “gaybashing” and was still in a group home in Bakersfield. The minor expressed a desire to be placed in a home in Fresno, so he could be near a friend. The minor was unhappy in the group home and experiencing problems at school.

The social study reported that on August 23 and 27, 2018, the minor called the social worker and asked to be removed from the group home. On August 29, 2018, a meeting was held, which the minor attended. The purpose of the meeting was to develop a plan to assist the minor with developing a stronger sense of boundaries, reduce his

anxiety, and support his continued well-being. The minor participated in the development of the plan.

In September 2018, the minor reported to the social worker that things were fine in the group home and at school. The minor reported he had received two text messages from his father that he found threatening. Father criticized the minor for putting himself “out there too much” and stated he was going to find the minor. The minor indicated he was afraid of father.

The agency indicated it did not provide services to father because of father’s criminal record, which included violent offenses, reported gang membership, and a prior referral for neglect and emotional abuse when the minor resided with father. The referral alleged father had forced the minor and his friend to smoke marijuana to “get the gay out of them.” The prior referral was inconclusive because the social worker had been unable to speak with the minor and father claimed the minor lied about the incident. The agency did not recommend placement of the minor with father, opining that it would not be in the minor’s best interests because of father’s violent behaviors.

The agency filed a report prior to the disposition hearing indicating that father reported he is bipolar and takes medication for his condition. Father acknowledged that in addition to the criminal history of California convictions detailed in the social study reports, he had a criminal record in Nevada. Father had a history of drug use, including methamphetamine.

The agency argued at disposition that placing the minor with father would be detrimental to the minor.

At the time of the September 25, 2018 disposition hearing, father was no longer on probation or parole. Father had been in prison until August 2017, and completed probation about one month prior to the disposition hearing. The last time the minor stayed with his father, father was living with the minor’s grandfather. At disposition, father was living in his own residence around the corner from grandfather. The agency

was recommending reunification services for father, but father indicated for the first time he wanted placement of the minor.

The juvenile court noted the minor was placed with father in December 2017 but left the home that same month. Father had indicated the minor “just left” and “did not want to come home.” Father had then indicated he “did not pay anymore attention because his child made a choice.” The juvenile court also noted the entry in the social study about father allowing the minor to smoke marijuana and father’s testimony was “revelatory as to the level of parenting skill” that father evinces. The referral on this incident was inconclusive only because the social worker was unable to make contact with the minor.

The juvenile court commented that the social study, the December 2017 referral, and father’s testimony “all give rise to evidence collectively that demonstrate” father’s “ability to care for [the minor’s] needs is lacking.” The juvenile court concluded that father’s parenting skills “are incomplete or not at a sufficient level to meet” the minor’s needs.

The juvenile court also had concerns “about continued allegations of violence.” The juvenile court also expressed concern that father perceived the minor “as being dishonest” and “minimized the reasons for the various violations.” The juvenile court ordered that the minor be involved in his case plan and in the planning for permanent placement.

The juvenile court denied father’s request for placement, finding “there is clear and convincing evidence that such placement would be detrimental to [the minor’s] safety, protection, or physical or emotional well-being.”

Father filed a timely notice of appeal on September 26, 2018.

DISCUSSION

Father's sole contention on appeal is that there was insufficient evidence of detriment to support the juvenile court's finding that placement of the minor with father would be detrimental to the minor. We disagree.

Section 361.2

Section 300 governs a dependency court's initial acquisition of jurisdiction over a child. Section 300, subdivision (b)(1) provides that jurisdiction exists when a child is at risk to suffer serious physical harm or illness "as a result of the failure or inability of his or her parent ... to adequately supervise or protect the child, ... or by the inability of the parent ... to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse" Section 361, subdivision (c)(1) authorizes the court to remove a child from "the physical custody of his or her parents ... with whom the child resides at the time the petition was initiated [if] the juvenile court finds clear and convincing evidence [that] ... [¶] [t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's ... physical custody"

The statute governing father's request that the minor be placed in his custody is section 361.2, subdivision (a), which provides: "When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child."

“[U]nder this statute a court has broad discretion to evaluate not only the child’s physical safety but also his or her emotional well-being. In an appropriate case, all that might be required is a finding such a placement would impair the emotional security of the child.” (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1490.) “[T]o comport with the requirements of the due process clause, a finding of detriment pursuant to section 361.2, subdivision (a) must be made by clear and convincing evidence.” (*In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1829; accord, *In re Isayah C.* (2004) 118 Cal.App.4th 684, 697 [“a nonoffending parent has a constitutionally protected interest in assuming physical custody, as well as a statutory right to do so, in the absence of clear and convincing evidence that the parent’s choices will be ‘detrimental to the safety, protection, or physical or emotional well-being of the child’ ”].)

Analysis

We review the record in the light most favorable to the court’s order to determine whether there is substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that the minor would suffer detriment. (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 329; cf. *In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154.)

Under the plain terms of the statute, if the juvenile court finds that placing a child in the physical custody of a noncustodial parent would not be detrimental to the child within the meaning of section 361.2, subdivision (a), it must place the child in the physical custody of the noncustodial parent. “A detriment evaluation requires that the court weigh all relevant factors to determine if the child will suffer net harm.” (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1425.) Section 361.2, subdivision (c) requires the juvenile court to make a finding, either in writing or orally on the record, as to the basis for its determination under section 361.2, subdivision (a). (*In re Isayah C.*, *supra*, 118 Cal.App.4th at p. 701.)

Here, father had a lengthy criminal record that included multiple convictions for violent offenses. When father had the minor in his custody in December 2017, after

being released from prison, the minor ran away from home that same month because, according to father, the minor felt “uncomfortable” in the home. Father’s response was to “not pay anymore attention” to the minor because the minor “made a choice.” The minor indicated that father and other family members engaged in “gaybashing” which made him uncomfortable because of his sexual orientation. As the juvenile court noted, father’s response to the minor fleeing his home disclosed a lack of parenting skills and an inability on father’s part to meet the minor’s needs.

The minor ran away from father’s home in December 2017 because the minor was uncomfortable in the home, according to father, and father made no further effort to connect with the minor. In March 2018, when the dependency case was filed, father did not seek placement of the minor. No services were provided to father during the dependency proceeding. In the dispositional social study, the social worker noted the minor reported receiving text messages from father the minor perceived as threatening and the minor stated he was afraid of father.

Clearly, the minor was fearful and uncomfortable when living with father, which may be the result of father’s attitude toward the minor’s sexual orientation. By the time of the disposition hearing in September 2018, the minor was comfortable in the group home. The minor was about three months away from his 16th birthday at the time of the disposition hearing. To remove the minor from a setting in which he felt comfortable and place him with a man the minor was afraid of and found threatening would be detrimental to the minor’s emotional well-being, if not his physical well-being.

The juvenile court had broad discretion to evaluate not only the child’s physical safety but also his emotional well-being. A placement that would impair the emotional security of the child, as would the placement with father, is all that is required for finding detriment. (*In re C.C.*, *supra*, 172 Cal.App.4th at p. 1490.)

DISPOSITION

The juvenile court's order pursuant to Welfare and Institutions Code section 361.2 denying father's request for placement of the minor is affirmed.